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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of Jurists (Pan-Canadian section) and the Ligue des droits et libertés du Québec (Canada), affiliated to the International Federation of Human Rights Leagues, non-governmental organizations with special consultative status

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1988/4, of 24 May 1988.

[28 September 1998]

1. This note, which relates to the consideration of the third periodic report of Canada (E/1994/104/Add.17), is submitted by the American Association of Jurists (Pan-Canadian section) and by the Ligue des droits et libertés du Québec (Canada), affiliated to the International Federation of Human Rights Leagues. We work mainly in Quebec and have consulted our members and more than 150 community and trade union groups in Quebec in preparing this report as part of a human rights education initiative extending over more than three years.

2. The third periodic report of Canada under the International Covenant on Economic, Social and Cultural Rights was submitted in November 1997, two years late.

3. Every year since the Canadian situation was last considered, in 1993, Canada has adopted legislation and policies that have significantly restricted its citizens' full enjoyment of the economic and social rights guaranteed by the Covenant. We invite the Committee to note that, since Canada's report refers to situations and actions occurring after 1995, the Committee is therefore authorized to discuss all more recent developments in its dialogue.

4. The aim of this communication is to draw attention to Canada's increasingly marked failure to respect and ensure the progressive realization of the right to paid work and an adequate standard of living and other economic and social rights, even as it boasts of the first place awarded it by the United Nations Development Programme (UNDP) in its World Human Development Report.

A. The Canadian Government's undermining of the progressive realization of rights

5. Since 1990, the entire Canadian social security system has been heavily cut back. The principle of universal coverage is under threat in some programmes, such as old-age pensions and family allowances, which have been replaced by a single tax benefit, pushing up considerably the number of persons needing to apply to the various provincial social assistance schemes. The Quebec Government has estimated that the changes to the unemployment insurance scheme since 1990 have excluded more than 130,000 persons per year, 30,000 of whom must now apply for welfare assistance.

1. Articles 6 and 7 of the Covenant relating to work

6. The unemployment insurance scheme, set up as a social safety net against the risk of unemployment, has undergone radical change, becoming a programme to encourage people to work and a mechanism for labour management. These changes have also had the effect of shutting out nearly half of those who previously benefited from the scheme (only 43 per cent of contributors who lose their jobs now receive any benefit, as compared with 80 per cent in 1993), and passing on some of the costs of the new unemployment insurance scheme to temporary or casual workers who have to join with no certainty that they will benefit from it. Enormous surpluses, on the order of 20 billion dollars (in September 1998) have been released by these measures, which have turned the social security system into a tax on work and workers.

2. Article 9 (social security)

7. The Federal Government has gradually stopped contributing to provincial social programmes and in 1995 abolished the Canada Assistance Plan (CAP). The Government of Canada had always claimed, including in its formal communication of July 1993, to consider this mechanism to be the means by which it fulfilled its international obligations. The gap to be made up by the provinces translated into drastic reductions in the social programmes administered by the provinces.

3. Article 11 (right to housing)

8. In spite of the comments made by the Committee in 1993, Canada decided on 1 January 1994 to discontinue long-term funding of social housing projects. The indigenous housing situation is even more deplorable.

4. International trade agreements

9. The implementation of the North American Free Trade Agreement (NAFTA) has resulted in economic and social rights being subordinated to considerations of international trade. Thus a number of social programmes are now deemed to give an "unfair competitive advantage", i.e. State aid that might bring down production costs; economic and social rights are therefore considered obstacles to free inter-State trade, and their justiciable nature is therefore denied.

B. Measures taken by Quebec

10. The authors of this note, who work mainly in Quebec, wish to draw particular attention to Quebec's performance in fulfilment of the obligations of the Covenant.

11. Canada is a federation in which jurisdiction in private law, social security, health, education and labour law has been delegated to the provinces. It is therefore the provinces, subject though they are to squeezes on expenditure shared with the federal Government, which have effectively been expected to take responsibility for the proposed neo-liberal shift. A number of provinces very soon adopted the zero-deficit target for public expenditure with no concern for their obligations under the Covenant.

1. Quebec's Charter of Human Rights and Freedoms

12. The Quebec Charter of Human Rights and Freedoms (1976) includes a number of provisions aimed at safeguarding economic and social rights, including the right to financial assistance intended to provide an adequate standard of living.

13. The Quebec Charter includes a restrictive list of prohibited grounds for discrimination, whereas the Covenant adds the words "or other status" (art. 2, para. 2). In addition, the Charter states that economic and social rights are guaranteed only "to the extent provided under the law", which constitutes an important limitation. This restriction should be deleted and the Charter amended to explicitly allow complaints based on these provisions to be lodged directly with the Quebec Human Rights Tribunal.

2. Articles 6, 7 and 9 (right to freely chosen work and to social security)

14. Since some workers earning the minimum wage (the "working poor") live below the poverty thresholds set by the Canadian authorities themselves, the requirements of the Covenant (art. 7 (a) (ii)) are not observed.

15. The social assistance scheme, known as last resort assistance and historically associated with the right to an adequate standard of living, has become an income-supplement programme and a means of controlling unskilled labour or people with no job security. Measures relating to "employability" and "workfare" (work for welfare) have been introduced to make social benefits subject to the completion of a job or job training course, thereby placing conditions on the enjoyment of this right.

16. These measures make it possible to diminish the importance of the right to State assistance based on need, and to replace it by the criterion of ability or inability to work, based on a medical or administrative decision. The criterion of "a decent living" is thus no longer a right. Anyone who leaves or turns down a job without what the official who has offered the job regards as a good reason could have his last resort assistance cut back, which would run counter to his right to freely choose his work and to social security. Certain discriminatory measures are aimed particularly at young people in this situation.

17. Workers on "workfare" in Quebec are deprived of the right to freely choose their work and of the protection of general legislation. The Act Respecting Income Security, for example, explicitly allows the minister in charge of this programme to exempt employers from the need to observe labour standards, including those relating to the minimum wage and to the right to free association, which is a violation of article 7 of the Covenant. These provisions were maintained when the law was reviewed.

3. Article 11 (right to housing)

18. According to the Canada Mortgage and Housing Corporation, some 341,000 households in Quebec are poorly housed and should have access to social housing. These statistics do not take full account of the fact that, in one family in three, more than one third of its income goes towards housing and, in one family in six, more than half. This situation has been exacerbated by cuts in social housing budget allocations and the reduction in the supplementary housing allowance for people on social assistance. Lastly, the number of homeless persons is put at 20,000 in the Montreal area alone, where the temperature can easily drop below -30° in the winter.

4. Article 12 (right to health)

19. In the health area, the Government of Quebec has recently adopted a series of measures within the framework of its shift to outpatient care (virage ambulatoire) and the development of care in the home. The effect of these changes has been to reduce access to health services and substantially increase the volume of services offered by the private sector, including both profit-making and community-based services. Far from improving the free, universal services the State has provided for 30 years, privatization marks a return to a two-tier health system, thereby jeopardizing the universality that has come to characterize health care in Quebec.

20. At the same time, a payment system has been introduced to cover the cost of medicines, which previously were free of charge for those on welfare and for older persons, who are now obliged to buy them. The emergency financial

aid that private charitable organizations have had to introduce barely makes up for this assault on the enjoyment of the right to health for those most at risk.

5. Article 13 (right to education)

21. It is estimated that nearly one adult in five in Quebec is functionally illiterate, a situation that is likely to deteriorate as a result of recent budget cutbacks in this area. In addition, much ground has been lost in terms of access to education. University tuition fees tripled between 1989 and 1996 in Quebec.

6. Justiciability of rights and access to justice

22. Quebec has undertaken a far-reaching reform of its legal aid programme, the effect of which has been to make access to justice a privilege. The system used to provide full coverage of all legal services, whereas it now only covers specific services. For example, housing and consumer law and a significant part of labour law, as well as major areas of civil and criminal law, are now excluded. Furthermore, the system is now expected to operate on a closed budget up to a maximum fixed without regard to litigants' needs.

23. The rise in the eligibility threshold is also clearly insufficient, since it means that not all those who were eligible when the system was established in 1973 are still eligible. Lastly, the scale of fees for lawyers in private practice who accept legal aid briefs has been cut back so far that it is tantamount to a denial of the right to freedom of choice of the lawyer.

24. To the extent that the recognition and judicial promotion of economic and social rights affects chiefly the most vulnerable groups, any curtailment or reduction in the State's contribution to legal aid funding directly undermines the mechanisms of protection and defence of economic, social and cultural rights.

25. The courts have also adopted a restrictive interpretation which, while paying lip-service to economic and social rights, ignores the economic consequences that result from a refusal, in the name of the Executive's budgetary discretion, to require the State to spend the sums necessary to implement those rights.

C. Conclusion

26. In recent years, the legislation giving social and economic protection to the most vulnerable groups in society has undergone a complete overhaul, which represents a real reversal in terms of the fulfilment by Canada and the provinces of their obligations under the Covenant and a violation of the principle of the progressive realization of economic and social rights.

27. A State party to the Covenant cannot avoid its obligations by claiming to be bound by economic imperatives determined, inter alia, by budget deficits. It is important to note that a major part of these budget deficits can be attributed to Governments' failure to tax company and business profits fairly.

28. We deplore the gradual disappearance of a number of remedies formerly provided under the various social protection schemes at both the federal level (CAP) and the provincial level, and the lack of a specific legislative framework to ensure the genuine recognition of economic and social rights.

29. For at least three years, the non-governmental organizations (NGOs) signatories to this communication have conducted a broad survey of more than 100 community and human rights organizations in Quebec, with the aim of identifying the adverse effects that the recent changes in Canada's and Quebec's social security systems might have on human rights. This has helped to build up an objective picture of the roll-back of the protection of economic and social rights in Quebec and Canada and to gather numerous examples of unjustified situations that we are unable to detail in this note, but which have been used in our representations and reports.

30. In the course of preparing this note, the signatory NGOs observed that the International Covenant on Economic, Social and Cultural Rights constitutes an effective instrument for human rights education and for dialogue with Governments during the legislative process. It provides guidelines that are of use in appraising the authorities' respect for every citizen's right to dignity and an adequate standard of living.